IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 104/2003
Reserved on: 24.4.2007
Date of decision 21.5.2007

Hardev **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioners : **Mr. N.D. Sharma, Advocate.**

For the respondent No.1 : **Mr. Sandeep Sharma, Asstt. Solicitor General of India.**

For the respondents No.2 **Mr. M.S. Chandel, Advocate General with Mr. M.A.Khan and Ms. Meenakashi Sharma, Dy.As. G.**

Rajiv Sharma, J. (Oral)

By way of this petition, the petitioner is seeking directions to the respondents to declare him a freedom fighter.

The brief facts necessary for the adjudication of this petition are that the State of H.P. has framed a scheme "H.P. Freedom Fighters Samman Rashi Yojna-1985" for the grant of financial assistance by the Government of Himachal Pradesh to the Freedom Fighters of Himachal Pradesh (hereinafter referred to as the Scheme). The petitioner submitted an application to the Deputy Commissioner, Mandi on 24.1.1997 along with application form vide Annexure P-1. In a sequel to the application submitted by the petitioner on 24.1.1997, the Deputy Commissioner

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

directed the Sub Divisional (Civil) Gohar on 27th March, 1997 to inquire into the matter and detailed a report along with the certificate of imprisonment be delivered to his office. The Deputy Commissioner, Mandi sent a letter to the Joint Secretary (General Administration Department), Himachal Pradesh on 18th January, 1999 stating therein that on inquiry it has been found that Sh. Hardev son of Sh. Uttam Singh remained under-ground from 28th September, 1947 to 25th February, 1948. In support of this, Sh. Tej Singh Nidharak has given his affidavit. Alongwith letter dated 18th January, 1999, the Deputy Commissioner has also enclosed the report of the Sub Divisional Officer (Civil), Gohar for further necessary action vide Annexure P-3/T.

It appears from the record that the case of the petitioner claiming pension under the Scheme was rejected on 19th June, 2000. Thereafter the petitioner has submitted an application for reconsideration of his case on 25th May, 2001 vide Annexure P-4. The petitioner was informed by the Under Secretary (GAD) vide communication dated 7th June, 2001 that under the Himachal Pradesh Freedom-Fighters Samman Yojna, 1985, it was necessary to produce record of arrest warrant alongwith statements of the colleagues, who had been declared as Freedom-Fighters by the Central Government. The prayer of the petitioner to reconsider his case was accordingly rejected. The copies of the affidavits sworn in by Tej Singh Nidharak, Nagan and Ram Singh have been placed on record by the petitioner. The petitioner had again submitted representation for reconsideration of his case, but the same was rejected on 4th August, 2001 on the ground as mentioned in the earlier communication dated 19th June, 2000 and 7th June, 2001.

In sequel to the notices issued by this Court, respondents No.1 and 2 have filed their respective replies. As far as the reply of respondent

No.2 is concerned, it is stated therein that the case of the petitioner was placed before the Sub Committee of the Himachal Pradesh Freedom Fighters Welfare Board in its 43rd Meeting held on 16th May, 2000 but the Committee was not satisfied because copies of the arrest warrant of the-then Ruler were neither produced by the petitioner nor such documents were found in the Government record and consequently the Sub Committee has rejected the case of the petitioner and information to this effect was given to the petitioner on 19th June, 2000.

Before adverting to the pleas raised by the counsel appearing on behalf of respondents are taken into consideration, it will be apt to reproduce the relevant portions of the Scheme as under:

> **"5 (b) Those Freedom Fighters who remained underground.- Documentary evidence by way of Court/Government Order, where such documentary evidence is not available, a certificate from a Freedom Fighter who is getting Freedom Fighters Pension from the Central Government specifying the period the applicant remained underground alongwith an affidavit from the applicant may be accepted subject to the satisfaction of Government."**

It is evident that the petitioner was fulfilling the parameters of the Scheme and was entitled to get the pension. The case of the petitioner has been recommended by the Sub Divisional officer (Civil) Gohar as is evident from the contents of Annexure P-3 dated 18th June, 1999. The Sub Divisional Officer (Civil) Gohar has submitted the report after inquiring into the facts. The petitioner has enclosed the copies of the affidavits of Tej Singh Nidharak, Nagan and Ram Singh, who according to the petitioner are getting Freedom Fighter pension under the Scheme of the Central Government. In view of the affidavits giving therein the details of

the period the petitioner has remained underground, there was no requirement of the documents as insisted for by the Sub Committee. The Sub Committee has failed to take into consideration the provisions of para 5 (b) of the Scheme while rejecting the case of the petitioner. This Court is of the view that the petitioner is entitled to the Freedom Fighter pension as per the scheme on the basis of the material, which was placed before the Sub Committee.

Accordingly, the writ petition is allowed. The impugned Annexure P-5 dated 7th June, 2001 and Annexure P-7 dated 4th August, 2001 are quashed and set aside. The respondents are directed to reconsider the case of the petitioner in conformity with para 5(b) of the Scheme within a period of six weeks from today.

There shall be no order as to costs.

(Rajiv Sharma), Judge

May 21, 2007
Awasthi